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Attorneys for Defendant and Third-Party
Plaintiff PELOTON INTERACTIVE, INC.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

VR OPTICS, LLC,
Plaintiff,

-v-

PELOTON INTERACTIVE, INC.,
Defendant.

16-CV-6392 (JPO)

PELOTON INTERACTIVE, INC.,
Third-Party Plaintiff,

-v-

VILLENCY DESIGN GROUP, LLC; ERIC
VILLENCY; and JOSEPH COFFEY,
Third-Party Defendants.

**PELOTON'S STATEMENT OF
MATERIAL FACTS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
AS TO CLAIMS AGAINST VILLENCY
DESIGN GROUP, ERIC VILLENCY
AND JOSEPH COFFEY**

Pursuant to Federal Rule of Civil Procedure 56(c), Local Civil Rule 56.1, and Judge Oetken's Individual Practices Section 3(E), Defendant and Third-Party Plaintiff Peloton Interactive, Inc. ("Peloton") submits this Statement of Material Facts in connection with its Motion for Summary Judgment As to Claims Against Villency Design Group, Eric Villency and Joseph Coffey, and states as follows:

The Parties

1. Defendant Peloton Interactive, Inc. ("Peloton") was founded in New York in 2012.¹
2. Peloton's predecessor-in-interest was an entity named Peloton Interactive, LLC. Peloton Interactive, Inc. is the legal successor to Peloton Interactive, LLC.²
3. Peloton is a hardware, software and media company that brings fitness class experiences to users in their homes through live and on-demand content.³
4. Peloton's Chief Executive Officer, John Foley ("Foley") conceived of the Peloton at-home cycling studio experience in 2011.⁴
5. In 2012, Peloton contracted with Third-Party Defendant Villency Design Group, LLC (n/k/a 430 West Broadway, LLC) ("VDG") to design Peloton's first product – an interactive stationary exercise bike equipped with a computerized touchscreen console and streaming technology ("Peloton Bike").⁵

¹ Ex. A, Foley Dep. 48:10-16; Ex. B, Cortese Dep. 13:3-5; Ex. C, "About the Company," PELOTON214232-234 (Cortese Dep. Ex. 2).

² Ex. D, Kushi Dep. 30:2-8; Ex. B, Cortese Dep. 298:16-20. In this Statement of Material Facts, the term "Peloton" refers to Peloton Interactive, Inc. and Peloton Interactive, LLC, individually or collectively, as context requires.

³ Ex. A, Foley Dep. 51:3-52:6, 63:13-66:9; Ex. C, "About the Company," PELOTON214232-234 (Cortese Dep. Ex. 2).

⁴ Ex. A, Foley Dep. 29:12-30:5, 48:21-50:22.

⁵ Ex. A, Foley Dep. 144:2-145:21; Ex. E, Villency Dep. 16:2-14; Ex. B, Cortese Dep. 275:18-276:20; Ex. F, 2012 Design, Development and Manufacturing Agreement, V_000052-065 (Coffey Dep. Ex. 28).

6. VDG is a Delaware limited liability company with a principal place of business at 430 West Broadway, New York, New York, 10012.⁶

7. Third-Party Defendant Eric Villency (“Villency”) owns [REDACTED] interest in VDG and is also a managing member of VDG.⁷

8. Third-Party Defendant Joseph Coffey (“Coffey”) owns [REDACTED] interest in VDG and is also a managing member of VDG.⁸

9. No other individuals or entities are managers or members of VDG.⁹

10. From June 27, 2011, until today, Villency and Coffey have owned and controlled VDG.¹⁰

11. In 2015, VDG changed its name to 430 W. Broadway LLC.¹¹

12. 430 W. Broadway LLC and VDG are the same entity.¹²

13. Plaintiff VR Optics, LLC (“VRO”) is a New York limited liability company with a principal place of business at 430 West Broadway, New York, New York, 10012.¹³

14. VDG and VRO share the same principal place of business.¹⁴

15. Villency and Coffey formed VRO as a “single purpose entity.” It is “just a [] holding company” for United States Patent No. 6,902,513 (“513 Patent”), entitled “Interactive Fitness Equipment.”¹⁵

⁶ Ex. G, Operating Agreement of Villency Design Group, LLC, V_031619-678 at V_031649-78.

⁷ Ex. E, Villency Dep. 20:4-21:25; Ex. H, Coffey Dep. 39:5-40:11; Ex. G, Operating Agreement of Villency Design Group, LLC, at V_031665 (Agreement Exhibit A); *id.*, § 4.1. (“Eric Villency and Joseph Coffey (Manager(s)) shall manage the Company.”); *see also id.*, V_031664.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Ex. I, Certificate of Formation of Villency Design Group (Coffey Dep. Ex. 3); Ex. H, Coffey Dep. 47:21-48:2.

¹² Ex. E, Villency Dep. 20:4-21:25; Ex. H, Coffey Dep. 47:10-12.

¹³ Ex. H, Coffey Dep. 88:13-89:6, Ex. J, Articles of Incorporation of VR Optics, LLC, V_000001-03 (Coffey Dep. Ex. 5).

¹⁴ Ex. H, Coffey Dep. 89:3-9.

¹⁵ Ex. E, Villency Dep. 26:16-27:6.

16. VRO has a single asset – the '513 Patent.¹⁶

17. Apart from the '513 Patent, VRO has never [REDACTED]

[REDACTED]¹⁷

18. Villency and Coffey each own a [REDACTED] interest in VRO.¹⁸

19. Villency and Coffey are both managing members of VRO.¹⁹

20. No other individuals or entities are managers or members of VRO, and no other individuals or entities own any interest in VRO.²⁰

21. Coffey is an attorney actively licensed in the State of New York.²¹

The 2012 Design, Development and Manufacturing Agreement.

22. Peloton's Chief Executive Officer and Co-Founder, John Foley, sought to partner with VDG for the design and manufacture of Peloton's interactive stationary bike, particularly because of [REDACTED]²²

23. Peloton and VDG entered into a valid, written contract effective on April 5, 2012, entitled "Design, Development and Manufacturing Agreement" ("2012 Agreement").²³

24. Villency executed the 2012 Agreement on behalf of VDG as a "Manager Member."²⁴

25. Coffey drafted the 2012 Agreement.²⁵

¹⁶ Ex. H, Coffey Dep. 91:18-20.

¹⁷ Ex. H, Coffey Dep. 91:12-93:8.

¹⁸ Ex. E, Villency Dep. 22:11-17.

¹⁹ Ex. H, Coffey Dep. 90:22-91:1.

²⁰ Ex. H, Coffey Dep. 91:6-11.

²¹ Ex. H, Coffey Dep. 17:17-25; Ex. K, New York State Bar Attorney Information for J. Coffey.

²² Ex. A, Foley Dep. 144:2-145:21; Ex. E, Villency Dep. 16:2-11; Ex. B, Cortese Dep., 275:18-276:20.

²³ Ex. E, Villency Dep. 56:8 – 58:3; Ex. F, 2012 Agreement (Coffey Dep. Ex. 28).

²⁴ Ex. E, Villency Dep. 56:13-22, Ex. F, 2012 Agreement, p. 13 (Coffey Dep. Ex. 28).

²⁵ Ex. H, Coffey Dep. 225:2-8.

26. Coffey reviewed the 2012 Agreement and provided legal counsel to VDG and Villency prior to Villency executing the 2012 Agreement.²⁶

27. Peloton and VDG negotiated the 2012 Agreement in an arms-length transaction between Peloton and VDG.²⁷

28. Upon executing the 2012 Agreement, Peloton became VDG's [REDACTED]

[REDACTED]²⁸

29. The 2012 Agreement inures to the benefit of, and is binding upon, Peloton Interactive, LLC and Villency Design Group, LLC, and each of their respective successors.²⁹

30. The 2012 Agreement is governed by and must be construed in accordance with the laws of the State of New York.³⁰

31. There is no dispute that Peloton fully performed each of its obligations under the 2012 Agreement.³¹

32. In the 2012 Agreement, "[REDACTED]

[REDACTED]³²

33. The 2012 Agreement obligated VDG to

[REDACTED]³³

²⁶ Ex. H, Coffey Dep., 220:18-230:25

²⁷ *Id.*

²⁸ Ex. H, Coffey Dep., 78:6-79:5.

²⁹ Ex. F, 2012 Agreement, § 7.3(h) (Coffey Dep. Ex. 28).

³⁰ Ex. F, 2012 Agreement, § 7.3(e) (Coffey Dep. Ex. 28).

³¹ Doc. 59, Third-Party Defs' Answer, ¶ 71; Ex. H, Coffey Dep. 235:10-237:5.

³² Ex. F, 2012 Agreement, p. 1 (Coffey Dep. Ex. 28).

³³ Ex. F, 2012 Agreement, § 1.1 (Coffey Dep. Ex. 28) (emphasis in original).

34. In Section 1.3 of the 2012 Agreement, VDG acknowledges [REDACTED]

.³⁴

35. In Section 2.1 of the 2012 Agreement, VDG agreed:

36. The 2012 Agreement [REDACTED]:

.³⁵

37. Under the 2012 Agreement, Peloton's [REDACTED]"

.³⁶

38. In other words, [REDACTED]

.³⁷

39. Section 1.8 of the 2012 Agreement states:

³⁴ Ex. F, 2012 Agreement, § 1.3 (Coffey Dep. Ex. 28).

³⁵ Ex. F, 2012 Agreement, § 1.7 (Coffey Dep. Ex. 28) (emphasis supplied).

³⁶ Ex. F, 2012 Agreement, § 1.7 (Coffey Dep. Ex. 28) (emphasis supplied).

³⁷ *Id.*

[REDACTED]

38

40. In Section 2.7(c) of the 2012 Agreement, VDG expressly represented and warranted to Peloton [REDACTED]

[REDACTED]

39

41. In Section 6.1 of the 2012 Agreement, VDG agreed [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40

42. Section 5.6 of the 2012 Agreement states:

[REDACTED]

43. Peloton fully performed each of its obligations under the 2012 Agreement.⁴²

44. Peloton paid the Base Fee in full under the terms of the 2012 Agreement.⁴³

45. All warranties made by VDG in the 2012 Agreement survived the expiration or termination of the 2012 Agreement.⁴⁴

³⁸ Ex. F, 2012 Agreement, § 1.8 (Coffey Dep. Ex. 28) (bold and italics supplied).

³⁹ Ex. F, 2012 Agreement, § 2.7(c) (Coffey Dep. Ex. 28).

⁴⁰ Ex. F, 2012 Agreement, § 6.1 (Coffey Dep. Ex. 28).

⁴¹ Ex. F, 2012 Agreement, § 5.6 (Coffey Dep. Ex. 28).

⁴² Ex. H, Coffey Dep., 235:10-237:5, 239:14-19; Doc. 59, Third-Party Defs' Answer, ¶ 71.

⁴³ *Id.*

⁴⁴ Ex. F, 2012 Agreement, § 7.3(b) (Coffey Dep. Ex. 28).

46. VDG began working [REDACTED]

47. VDG's "primary focus" [REDACTED]

48. VDG itself or through its contractors [REDACTED]

49. The Device Bike contemplated in the 2012 Agreement is the same instrumentality that Villency and Coffey now accuse of infringing the '513 Patent through Plaintiff VRO.⁴⁸

The 2014 Bike Development and Services Agreement

50. On June 24, 2014, Peloton and VDG executed a valid, written contract, entitled "Bike Development and Services Agreement" ("2014 Agreement").⁴⁹

⁴⁵ Ex. A, Foley Dep. 151:8-153:15.

⁴⁶ Ex. B, Cortese Dep., 59:13-18, 270:8-10; Ex. H, Coffey Dep., 244:20-245:1.

⁴⁷ Ex. B, Cortese Dep., 57:20-24, 63:23-65:4, 66:10-24, 72:22-73:4, 107:17-108:12, 109:21-110:13, 202:15-203:4, 251:3-252:7, 289:25-290:16, 313:2-10, 313:15-314:14; Ex. E, Villency Dep., 67:9-21, 69:12-20, 72:3-8, 89:18-90:11, 111:6-23, 122:12-17, 204:16-207:4; Ex. L, January 14, 2015 e-mail chain between Villency and Cortese, (Villency Dep. Ex. 7); Ex. M, Milstein Dep., 92:25-94:12, 144:13-145:24; Ex. N, April 24, 2012 e-mail from Cortese to Milstein, copying Villency and Foley (Milstein Dep. Ex. 3); Ex. O, April 26, 2012, e-mail chain between Cortese and Milstein (Milstein Dep. Ex. 4).

⁴⁸ *Id.*; Doc. 1, Complaint; Ex. P, Lenz 2019.03.01 Infringement Report, at ¶ 17.

⁴⁹ Ex. Q, 2014 Agreement, (Villency Dep., Ex. 13); Ex. H, Coffey Dep., 232:25-233:7.

51. Peloton and VDG negotiated the 2014 Agreement in an arms-length transaction between Peloton and VDG.⁵⁰

52. Villency executed the 2014 Agreement on behalf of VDG.⁵¹

53. Coffey reviewed the 2014 Agreement and provided legal counsel to VDG and Villency prior to Villency executing the 2014 Agreement.⁵²

54. The 2014 Agreement inures to the benefit of, and is binding upon, Peloton Interactive, LLC and Villency Design Group, LLC, and each of their respective successors.⁵³

55. The 2014 Agreement is governed by and must be construed in accordance with the laws of the State of New York.⁵⁴

56. The 2014 Agreement expired on June 24, 2016 – two years after Peloton and VDG executed the 2014 Agreement.⁵⁵

57. The 2014 Agreement expired because its term ended. Peloton did not terminate the 2014 Agreement. This was in part because as Peloton grew, it required VDG's services less.⁵⁶

58. Peloton fully performed all its obligations under the 2014 Agreement.⁵⁷

59. The 2014 Agreement defines [REDACTED]
[REDACTED]

⁵⁰ Ex. H, Coffey Dep., 245:10-20; Ex. E, Villency Dep., 159:21 – 163:2; Ex. A, Foley Dep., 311:20 – 312:14.

⁵¹ Ex. Q, 2014 Agreement, Signature Page (Villency Dep. Ex. 13); Ex. H, Coffey Dep., 17:11-20; 72:16-73:17; 232:15-234:7; 245:10-20.

⁵² *Id.*; see also Ex. H, Coffey Dep. 233:17-24, 245:8-20.

⁵³ Ex. Q, 2014 Agreement, § 8.3(h) (Villency Dep. Ex. 13).

⁵⁴ Ex. Q, 2014 Agreement, § 8.3(e) (Villency Dep. Ex. 13)..

⁵⁵ Ex. Q, 2014 Agreement, § 5.1 (Villency Dep. Ex. 13); Ex. H, Coffey Dep., 258:12-259:19

⁵⁶ Ex. Q, 2014 Agreement, § 5.1 (Villency Dep. Ex. 13); Ex. A, Foley Dep. 271:12-19, 274:15-275:9, 289:2-290:16

⁵⁷ Doc. 59, Third-Party Defs' Answer, ¶ 71; Ex. H, Coffey Dep. 178:20-183:7, 239:14-16; Ex. R, June 27, 2016, invoice to Peloton from VDG (Coffey Dep. Ex. 20); Ex. A, Foley Dep. 271:21-273:3, 318:18-319:4.

⁵⁸ Ex. Q, 2014 Agreement, p. 1 (Villency Dep. Ex. 13).

60. In the 2014 Agreement, VDG admitted [REDACTED]

[REDACTED].⁵⁹

61. The 2014 Agreement states [REDACTED]

[REDACTED].⁶⁰

62. The 2014 Agreement obligated VDG [REDACTED]

[REDACTED]⁶¹

63. In the 2014 Agreement, VDG agreed [REDACTED]

64. In the 2014 Agreement, VDG agreed [REDACTED]

65. In the 2014 Agreement, VDG agreed [REDACTED]

66. In the 2014 Agreement, VDG agreed [REDACTED]

67. The 2014 Agreement [REDACTED]

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Ex. Q, 2014 Agreement, § 1 (Villency Dep. Ex. 13)..

⁶² Ex. Q, 2014 Agreement, § 1.1(b) (Villency Dep. Ex. 13).

⁶³ Ex. Q, 2014 Agreement, § 1.1(c) (Villency Dep. Ex. 13).

⁶⁴ Ex. Q, 2014 Agreement, § 1.1(d) (Villency Dep. Ex. 13).

⁶⁵ Ex. Q, 2014 Agreement, § 1.1(f) (Villency Dep. Ex. 13).

[REDACTED]

66

68. In the 2014 Agreement, VDG [REDACTED]

[REDACTED]

67

69. In Section 8.2 of the 2014 Agreement, VDG expressly represented and warranted

[REDACTED]

68

70. In the 2014 Agreement, VDG agreed to [REDACTED]

[REDACTED]

69

71. [REDACTED]

[REDACTED]

70

72. [REDACTED]

71

73. Under the 2014 Agreement, Peloton agree [REDACTED]

[REDACTED]:

(a) \$15,000 per month for [Returns, Refurbish, and Remote

⁶⁶ Ex. Q, 2014 Agreement, § 1.7(a) (Villency Dep. Ex. 13) (emphasis supplied).

⁶⁷ Ex. Q, 2014 Agreement, § 1.7(b) (Villency Dep. Ex. 13).

⁶⁸ Ex. Q, 2014 Agreement, § 8.2 (Villency Dep. Ex. 13) (emphasis supplied).

⁶⁹ Ex. Q, 2014 Agreement, § 7.1(b) (Villency Dep. Ex. 13).

⁷⁰ Ex. Q, 2014 Agreement, § 1.7(a) (Villency Dep. Ex. 13).

⁷¹ Ex. Q, 2014 Agreement, p. 1 (Villency Dep. Ex. 13).

[REDACTED]⁷²

74. Additionally, Peloton agreed [REDACTED]

[REDACTED]

[REDACTED]

75. Peloton paid VDG in full under the terms of the 2014 Agreement for all sums due and owing through the expiration of the 2014 Agreement.⁷³

76. Pursuant to Section 8.3(b) of the 2014 Agreement, all representations and warranties made by VDG in the 2014 Agreement survived the expiration of the 2014 Agreement.⁷⁴

77. Section 5.6 of the 2014 Agreement provides:

[REDACTED]⁷⁵

78. Section 8.3(b) of the 2014 Agreement provides:

[REDACTED]⁷⁶

⁷² Ex. Q, 2014 Agreement, § 4.1 (Villency Dep. Ex. 13).

⁷³ See Doc. 59, Third-Party Defs' Answer, ¶ 71; Ex. H, Coffey Dep. 178:20-183:7; 239:14-16; Ex. R, June 27, 2016, invoice to Peloton from VDG (Coffey Dep. Ex. 20); Ex. A, Foley Dep., 271:21-273:3, 318:18-319:4.

⁷⁴ Ex. Q, 2014 Agreement, § 8.3(b) (Villency Dep. Ex. 13) ("All representations and warranties of [VDG] and Peloton contained in this Agreement will survive the termination of this Agreement.").

⁷⁵ Ex. Q, 2014 Agreement, § 5.6 (Villency Dep. Ex. 13).

⁷⁶ Ex. Q, 2014 Agreement, § 8.3(b) (Villency Dep. Ex. 13).

79. Peloton's rights and remedies with respect to VDG's representations, warranties, and indemnification obligations in the 2014 Agreement survived the expiration of the 2014 Agreement.⁷⁷

80. The "Bike" that VDG claimed it "designed, developed and managed the manufacture of" in the 2014 Agreement is the same instrumentality that Villency and Coffey now accuse of infringing the '513 Patent through Plaintiff VRO.⁷⁸

VDG, Villency, and Coffey's Secret Negotiation with Microsoft

81. Unknown to Foley and others at Peloton, beginning as early as January 2016 and more than six months before the 2014 Agreement's expiration, VDG, through their patent counsel who are also VRO's trial counsel in this matter, began negotiating with Microsoft Technology Licensing, LLC ("Microsoft") for the purchase of the '513 Patent.⁷⁹

82. On January 8, 2016, VRO's patent counsel and trial counsel in this case, Leif Sigmond, contacted Microsoft regarding [REDACTED]

[REDACTED] Microsoft's Geoffrey Hoggard ("Hoggard") [REDACTED]

[REDACTED]

[REDACTED].⁸¹

83. On January 22, 2016, Hoggard tells Sigmond [REDACTED]

[REDACTED]

[REDACTED]⁸²

⁷⁷ Ex. Q, 2014 Agreement, §§ 5.6(b)-(c), 7.1(b), 8.3(b) (Villency Dep. Ex. 13).; Doc. 57, August 18, 2017 Opinion and Order, at *5.

⁷⁸ *Id.*; Doc. 1, Complaint; Ex. P, Lenz 2019.03.01 Infringement Report, at ¶17.

⁷⁹ Ex. E, Villency Dep. 243:15-244:24, 226:13-228:16, Ex. S, Jan. 22, 2016 email at MSFT-00000019-0001-0002 (Villency Dep. Ex. 18); Ex. T, at MSFT-00000040_0001-0002 (Villency Dep. Ex. 20); Coffey Dep. 104:1-108:1; Ex. U, at MSFT-00000019-0001-0002 (Coffey Dep. Ex. 8); Ex. A, Foley Dep. 228:2-6.

⁸⁰ Ex. H, Coffey Dep. 104:1-108:1; Ex. U, at MSFT-00000019_0002 (Coffey Dep. Ex. 8).

⁸¹ *Id.*

⁸² *Id.*

84. On January 26, 2016, Sigmond and Hoggard [REDACTED]

[REDACTED].⁸³

85. Sigmond responds to Hoggard [REDACTED]

[REDACTED]⁸⁴

86. VDG wanted to make sure that Peloton did not discover VDG's interest in or intent to purchase the '513 Patent.⁸⁵

87. On January 29, 2016, Coffey and Villency [REDACTED]

88. On January 29, 2016, Coffey [REDACTED]

⁸³ Ex. H, Coffey Dep. 108:20-109:23; Ex. V, MSFT-00000029_0001 (Coffey Dep. Ex. 9).

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Ex. H, Coffey Dep. 109:24-118:12; Ex. W, V_015535 (Coffey Dep. Ex. 10) (emphasis supplied).

⁸⁷ Ex. H, Coffey Dep. 120:24-123:21; Ex. X, Microsoft Non-Disclosure Agreement, MSFT-0000032_0001 (Coffey Dep. Ex. 11).

89. On March 14, 2016, Sigmond e-mailed Hoggard on behalf of VDG⁸⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

90. Microsoft [REDACTED]

[REDACTED]⁹⁰

91. On March 18, 2016, Microsoft sent a copy of the '513 Patent file history to Leif Sigmond and Mike Gannon.⁹¹ [REDACTED]

[REDACTED].⁹²

92. On March 23, 2016, Gannon (also VRO's patent counsel in this litigation) asked Microsoft [REDACTED] [REDACTED]

[REDACTED]

93. The draft Patent Sales Agreement [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]⁹⁶

⁸⁸ Ex. H, Coffey Dep. 124: 2-126:8; Ex Y, MSFT-00000067_0001 (Coffey Dep. Ex. 12).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Ex. H, Coffey Dep. 126:9-132:11; Ex. Z, MSFT-00000093_02 (Coffey Dep. Ex. 13);

⁹² *Id.*

⁹³ Ex. H, Coffey Dep. 131:21-135:16; Ex. AA, MSFT-00000094_0005 (Coffey Dep. Ex. 13A).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

94. On May 24, 2016, Microsoft followed-up with Sigmond and Gannon and requests

[REDACTED]

[REDACTED]⁹⁷

95. Gannon responded to Hoggard and Microsoft the next day:

[REDACTED]

96. VDG's [REDACTED].⁹⁹

97. VDG included [REDACTED]

[REDACTED]

98. VDG [REDACTED] because VDG intended to sue Peloton for patent infringement.¹⁰¹

⁹⁷ Ex. H, Coffey Dep. 133:4-139:24; Ex. BB, MSFT-00000117_0001-3 (Coffey Dep. Ex. 14).

⁹⁸ Ex. H, Coffey Dep. 141:5-145:19; Ex. CC, MSFT-0000119_0001-004 (Coffey Dep. Ex. 15) (emphasis added).

⁹⁹ *Id.*

¹⁰⁰ Ex. H, Coffey Dep. 141:5-145:19; 152:5-153:11; Ex. DD, Hoggard Dep. 102:5-104:18

¹⁰¹ *Id.*

99. On June 20, 2016, Nathan J. Seifert, an attorney at HDRBB, LLC (VDG's, Coffeys, and Villency's trial counsel in this action) filed Articles of Organization of VR Optics LLC with the State of New York.¹⁰²

100. All of the statements and activities described in Paragraphs 81-99 above occurred *before* the June 24, 2016, expiration of the 2014 Agreement with Peloton.¹⁰³

101. On July 8, 2016 – fourteen days after the 2014 Agreement expired¹⁰⁴ – Microsoft Technology Licensing, LLC and VRO [REDACTED]

102. Under the agreement, Microsoft agreed to sell the '513 Patent for a total purchase price of [REDACTED]

103. Additionally, Microsoft Agreement Sections 2.1 and 2.2 expressly [REDACTED]

[REDACTED]

¹⁰² Ex. H, Coffey Dep. 88:13-23; Ex. J, V_00001-03 (Coffey Dep. Ex. 5)

¹⁰³ See Ex. E, Villency Dep. 174:13-16; Ex. Q, 2014 Agreement, § 5.1 (Villency Dep. Ex. 13).

¹⁰⁴ *Id.*, (“Unless terminated sooner pursuant to the further provisions of this Article, this Agreement shall expire two (2) years from the date hereof.”); Ex. B, Cortese Dep. 261:11-25.

¹⁰⁵ Ex. H, Coffey Dep. 146:6-153:11; Ex. EE, Microsoft Agreement, at MSFT-00000185-0001 (Coffey Dep. Ex. 16).

¹⁰⁶ Ex. H, Coffey Dep. 146:6-153:11; Ex. EE, Microsoft Agreement, ¶¶ 2.1, 2.2, 2.5; *see also id.*, Ex. A (List of Patents) (Coffey Dep. Ex. 16).

¹⁰⁷ The Microsoft Agreement defines [REDACTED]

§ 1 (Coffey Dep. Ex. 16); *see also id.*, Ex. A (List of Patents); Ex. H, Coffey Dep. 146:6-153:11.

[REDACTED]

[REDACTED]

¹⁰⁸

104. In Section 6.1(c)(3), Microsoft [REDACTED]

[REDACTED]

[REDACTED] ¹⁰⁹

105. Exhibit B is entitled [REDACTED]

[REDACTED]

¹¹⁰

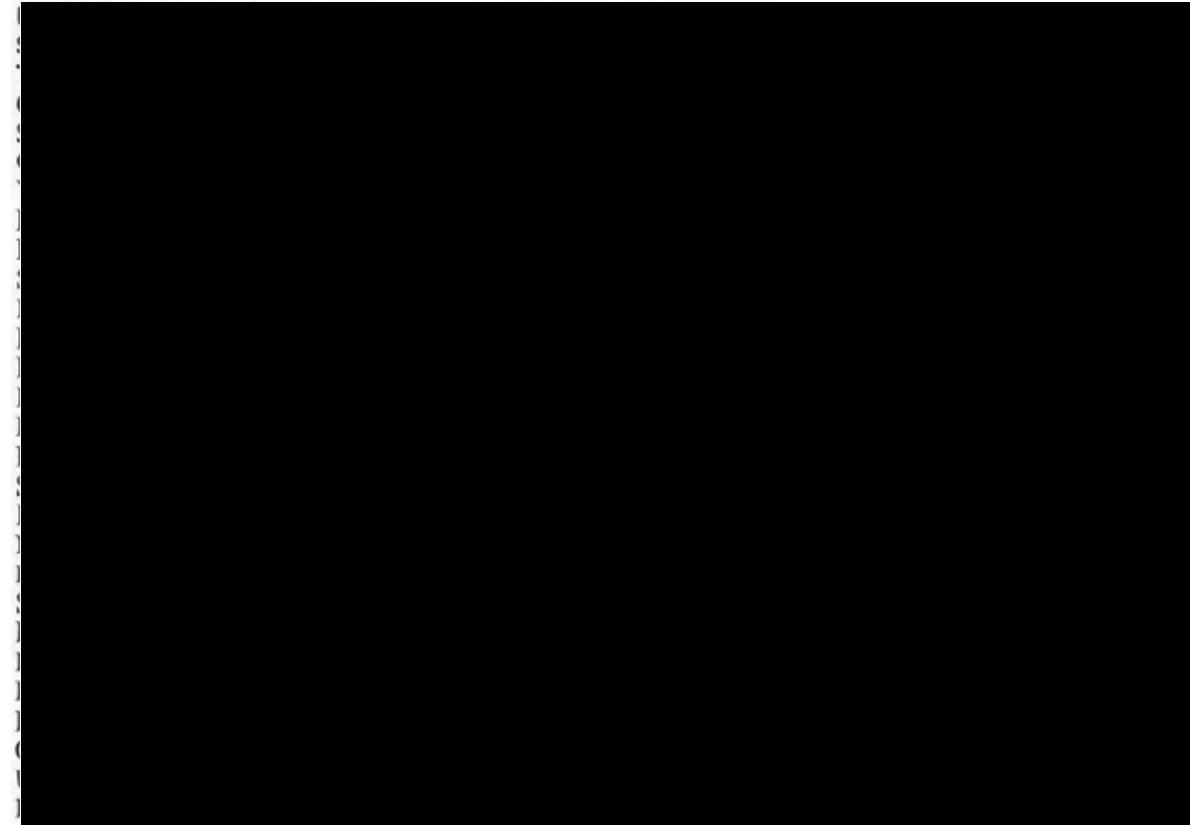
¹⁰⁸ Ex. EE, Microsoft Agreement, §§ 2.1, 2.2 (Coffey Dep. Ex. 16).

¹⁰⁹ *Id.*, Microsoft Agreement, § 6.1(c)(3) (Coffey Dep. Ex. 16) (emphasis in original); Ex. H, Coffey Dep. 146:6-153:11.

¹¹⁰ Ex. EE., Microsoft Agreement, at MSFT-00000185_0011 (emphasis added); Ex. H, Coffey Dep. 146:6-153:11.

106. Exhibit B's [REDACTED] is identical to [REDACTED] that Gannon sent to Hoggard and Microsoft [REDACTED] Even the typos are the same.¹¹¹

107. A day later, on May 26, 2016, Microsoft agreed [REDACTED]



VDG, Villency, and Coffey's [REDACTED]
[REDACTED]

108. On March 22, 2016 (the day before Sigmond [REDACTED]

[REDACTED],¹¹³ Coffey met or spoke [REDACTED]

¹¹¹ Compare Ex. CC, MSFT-00000119_0001 (Coffey Dep. Ex. 15) to Ex. EE, Microsoft Agreement, at MSFT-00000185_0011 (Coffey Dep. Ex. 16) (identifying [REDACTED]).

¹¹² Ex. FF, May 26, 2016 Email from M. Gannon MSFT-00000121_001-05.

¹¹³ Ex. Z, MSFT-00000093_001-02, (Coffey Depo Ex. 13); Ex. AA, MSFT-00000094_0001-0015 (Coffey Depo Ex. 13A).

[REDACTED]

[REDACTED].¹¹⁴

109. Biz2 Credit specializes in “[s]mall business loans, SBA loans, Traditional bank loans, Business lines of credit, Equipment financing, Business acquisition loans, Commercial real estate loans, Refinancing, and Merchant cash advances.”¹¹⁵

110. To memorialize the March 22, 2016 meeting, [REDACTED] ed Coffey at jcoffey@villency.com. In that e-mail, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹¹⁶

111. The “[REDACTED]” refers to the ’513 Patent.¹¹⁷

112. All of Coffey’s subsequent e-mail communications with [REDACTED] and relating to the [REDACTED] loan to purchase the ’513 Patent use Coffey’s jcoffey@villency.com e-mail address.¹¹⁸

113. Two days later, on March 24, 2016, Coffey e-mails [REDACTED]

[REDACTED]?”¹¹⁹

114. In response, [REDACTED] sends Coffey a [REDACTED]

[REDACTED], [REDACTED],

¹¹⁴ Ex. GG, March 22, 2016, e-mail from [REDACTED] to J. Coffey, V_031292.

¹¹⁵ Ex. GG, V_031292-93.

¹¹⁶ Ex. GG, V_031292 (emphasis supplied).

¹¹⁷ See *id.*

¹¹⁸ See e.g., Ex. FF, March 22, 2016, e-mail from [REDACTED] to J. Coffey V_031292-93; Ex. GG, March 24, 2016, email from [REDACTED] to J. Coffey, attaching [REDACTED], V_031294-97, Ex. HH, , March 25, 2012, e-mail from [REDACTED] to J. Coffey attaching executed [REDACTED], V_031308-312; Ex. II, March 25, 2016, email from [REDACTED] to J. Coffey, attaching complete document file, V_031344-427.

¹¹⁹ Ex. HH, V_031294.

¹²⁰ Ex. II, V_031308-312.

[REDACTED]

[REDACTED].¹²¹

115. On Friday, March 25, 2016, Coffey sends to [REDACTED] the following documents: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

116. The [REDACTED]

[REDACTED].¹²³

117. The [REDACTED]

[REDACTED]¹²⁴

118. [REDACTED]

[REDACTED]

¹²¹ Ex. II, at V_031310.

¹²² Ex. JJ, V_031344-427.

¹²³ Ex. JJ, at V_031355.

¹²⁴ Ex. JJ, at V_031357.

¹²⁵ Ex. JJ, at V_031417

119. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

121. [REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

¹²⁶ Ex. JJ, at V_031404.

¹²⁷ Ex. JJ, at V_031392-93.

¹²⁸ Ex. JJ, at V_031360.

¹²⁹ Ex. JJ, at V_031382

123. [REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

125. On Monday, March 28, 2016, one business day after [REDACTED]

[REDACTED].¹³²

126. [REDACTED]

[REDACTED]

[REDACTED].¹³³

127. Also on March 28, 2016, Coffey forwards [REDACTED]

[REDACTED].¹³⁴

128. On March 30, 2016, Coffey informs [REDACTED]

[REDACTED].¹³⁵

129. On April 11, 2016, Coffey met with [REDACTED]

[REDACTED].¹³⁶

130. On May 26, 2016, Coffey e-mails [REDACTED]

[REDACTED],

¹³⁰ Ex. JJ, at V_031371

¹³¹ Ex. II, V_031308-312; *Id.*, at V_031310; Ex. II, V_031344-427;

¹³² Ex. KK, March 28, 2016, e-mail from [REDACTED] to J. Coffey, V_031428-29.

¹³³ *Id.*

¹³⁴ Ex. LL, March 28, 2016 email from J. Coffey to E. Villency, V_031432-33.

¹³⁵ Ex. MM, April 6, 2016 email string from [REDACTED] to J. Coffey, V_031434-36.

¹³⁶ Ex. NN, Calendar invite from [REDACTED] to J. Coffey re business meeting, V_031437-39.

stating [REDACTED]

[REDACTED]

[REDACTED].¹³⁷

131. On June 3, 2016, in response to [REDACTED] request for additional documents, Coffey sent to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹³⁸

132. The [REDACTED]

[REDACTED]

133. [REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

¹³⁷ Ex. OO, May 27, 2016 email string from [REDACTED] to J. Coffey, V_031455-58, at V_031455-56 (emphasis supplied).

¹³⁸ Ex. PP, June 3, 2016 email from J. Coffey to [REDACTED], attaching additional documents, V_031493-531

¹³⁹ Ex. G, June 15, 2016 email from J. Coffey to [REDACTED], attaching additional documents, V_031619-678, at V_031621.

¹⁴⁰ Ex. PP, at V_031506-07.

¹⁴¹ Ex. PP, at V_031517-18

135. Approximately [REDACTED]

[REDACTED]

[REDACTED]

¹⁴²

136. VDG used its relationship with Peloton and monies paid by Peloton [REDACTED]

[REDACTED]

¹⁴³

137. A few hours after receiving updated financial information, [REDACTED]

[REDACTED]

¹⁴⁴

138. Also on June 3, 2016, Coffey executes [REDACTED]

[REDACTED]

[REDACTED]

139. The engagement agreement is entitled [REDACTED]

[REDACTED]

140. VRO's patent and current trial counsel, Michael Gannon, [REDACTED]

[REDACTED]

¹⁴⁷

141. On June 15, 2016, Coffey sends [REDACTED]

[REDACTED]

[REDACTED];

¹⁴² Ex. PP, at V_031506-07; *Id.*, at V_031517-18.

¹⁴³ Ex. HH, V_031308-312; Ex. JJ, V_031344-427; *id.*, at V_031355; *id.*, at V_031357; *id.*, at V_031404; *id.*, at V_031392-93; *id.*, at V_031360; *id.*, at V_031382.

¹⁴⁴ Ex. QQ, June 3, 2016 email from [REDACTED] to J. Coffey enclosing loan contracts for review, V_031471-031492.

¹⁴⁵ Ex. RR, June 3, 2016, Engagement Agreement, V_031281-031289.

¹⁴⁶ *Id.*, at V_031281.

¹⁴⁷ *Id.*, at V_031289.

[REDACTED]

[REDACTED].¹⁴⁸

142. VDG's [REDACTED]

[REDACTED]¹⁴⁹

143. On June 22, 2016, Coffey sends [REDACTED]

[REDACTED]¹⁵⁰

144. [REDACTED].¹⁵¹

145. The June 3 [REDACTED].¹⁵²

146. [REDACTED]”¹⁵³

147. The June 3 [REDACTED].¹⁵⁴

148. The June 3 [REDACTED]

[REDACTED]¹⁵⁵

149. The June 3 [REDACTED]

[REDACTED].¹⁵⁶

150. Villency was aware of the actions Coffey took [REDACTED]

[REDACTED]¹⁵⁷

¹⁴⁸ Ex. G, June 15, 2016 email string from J. Coffey to [REDACTED], V_031619-678, at V_031619

¹⁴⁹ *Id.*, at V_031621

¹⁵⁰ Ex. SS, June 22, 2016 email string from [REDACTED] to J. Coffey, V_031984-032004.

¹⁵¹ *Id.*

¹⁵² *Id.*, at V_031985.

¹⁵³ Ex. MM, V_031434-36 at V_031434, [REDACTED]

[REDACTED])

¹⁵⁴ Ex. SS, V_031984-032004.

¹⁵⁵ *Id.*

¹⁵⁶ Ex. SS, V_031984-032004, at V_031987.

¹⁵⁷ Ex. LL, V_031432-33; Ex. LL, V_031434-36.

151. Villency approved of the actions Coffey took on VDG's behalf [REDACTED]

[REDACTED].¹⁵⁸

152. All terms [REDACTED] were final prior to June 24, 2016 – the date VDG's 2014 Agreement with Peloton expired.¹⁵⁹

153. All of the statements and activities described in Paragraphs 108-152 above occurred *before* the June 24, 2016 expiration of VDG's 2014 Agreement with Peloton.¹⁶⁰

154. On Tuesday, July 5, 2016, Coffey e-mailed [REDACTED]

[REDACTED].¹⁶¹

155. Coffey's reference to [REDACTED]

[REDACTED].¹⁶²

156. As set forth above, the [REDACTED]

[REDACTED].¹⁶³

157. Three days after the [REDACTED],¹⁶⁴ on July 11, 2016, Villency and Coffey [REDACTED]

[REDACTED].¹⁶⁵

158. Except for the signatures, the contract date, and the repayment dates, the terms of the [REDACTED] are *identical* to the [REDACTED].¹⁶⁶

159. Both Villency and Coffey individually [REDACTED].¹⁶⁷

¹⁵⁸ *Id.*

¹⁵⁹ Ex. SS, V_031984-032004, at V_031984

¹⁶⁰ See Ex. Q, 2014 Agreement, § 5.1 (Villency Dep. Ex. 13).

¹⁶¹ Ex. TT, July 5, 2016 email from J. Coffey to [REDACTED] V_032006.

¹⁶² *Id.*

¹⁶³ Ex. H, Coffey Dep. 129:4-7, 146:13-19, 166:17-21; Ex. EE, Microsoft Agreement (Coffey Dep. Ex. 16) (identifying an effective date of July 8, 2016).

¹⁶⁴ *Id.*

¹⁶⁵ Ex. UU, 2016 Loan Agreement, V_032010-032031.

¹⁶⁶ Compare Ex. RR, at V_031985-032004 with Ex. TT, 2016 Loan Agreement, at V_032011-032030.

¹⁶⁷ Ex. UU, 2016 Loan Agreement, V_032010-032031, at V_032011.

160. Both Villency and Coffey [REDACTED]

[REDACTED]”¹⁶⁸

161. Also on July 11, 2016, Coffey [REDACTED]

[REDACTED]¹⁶⁹

162. [REDACTED]

[REDACTED]¹⁷⁰

163. The same day [REDACTED]

[REDACTED] Coffey e-mails [REDACTED]

[REDACTED]¹⁷¹

164. On July 12, 2016, [REDACTED]

[REDACTED] Coffey e-mails [REDACTED]

[REDACTED]”¹⁷²

165. When [REDACTED] asks [REDACTED]

responds and identifies [REDACTED].¹⁷³

¹⁶⁸ *Id.*, at V_032027, V_032030.

¹⁶⁹ Ex. UU, V_032031.

¹⁷⁰ *Id.*

¹⁷¹ Ex. VV, July 11, 2016 email from J. Coffey to [REDACTED] V_032110

¹⁷² Ex. WW, July 12, 2016 email from [REDACTED] to J. Coffey V_032150-51 (emphasis supplied).

¹⁷³ *Id.*

166. On July 12, 2016, Leif Sigmond represented only VDG. He did not represent VRO.¹⁷⁴

167. On July 14, 2016, Hoggard informs Gannon [REDACTED]

[REDACTED]¹⁷⁵

168. On July 20, 2016, Gannon responds [REDACTED]

[REDACTED]¹⁷⁶

169. Sometime between July 14, 2016, and July 20, 2016, McDonnell Boehnen Hulbert & Berghoff [REDACTED]

[REDACTED]¹⁷⁷

170. On July 26, 2016, McDonnell Boehnen Hulbert & Berghoff (Sigmond and Gannon's firm) [REDACTED]

[REDACTED]¹⁷⁹

171. **VDG's** 2016 Balance Sheet [REDACTED]

[REDACTED]¹⁸⁰

¹⁷⁴ Ex. RR, June 3, 2016, Engagement Agreement, V_031281-031289.

¹⁷⁵ Ex. XX, E-mail chain including Gannon, Sigmond, and Hoggard, MSFT-00000198_0001-0006, at MSFT_00000198_0001. Gannon latter follows up and asks for Microsoft to [REDACTED].
Id. The notarized patent assignment was executed on August 3, 2016.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*; *see also* Ex. WW, July 12, 2016 email from [REDACTED] to J. Coffey V_032150-51; and Ex. UU, V_032031.

¹⁷⁸ Ex. YY, July 26, 2016, Amended Engagement Agreement, V_031290-91.

¹⁷⁹ *Id.*, at V_031291.

¹⁸⁰ Ex. ZZ, 430 West Broadway LLC 2016 Balance Sheet V_031275-78.



172. VRO's 2016 Balance Sheet contains a



81



173. Additionally, in 2016, VRO reported



182

174. This



183

¹⁸¹ Ex. AAA, VR Optics 2016 Balance Sheet V_031279-80.

¹⁸² *Id.*

¹⁸³ Ex. ZZ, V_031275-78, at V_031278.



175. The face of the [REDACTED]

[REDACTED]

176. [REDACTED]

[REDACTED]

[REDACTED].¹⁸⁵

177. VRO's 2017 Balance Sheet and Profit and Loss Statement identify [REDACTED]

[REDACTED]

[REDACTED]

178. VRO's 2018 Balance Sheet and Profit and Loss Statement identify [REDACTED]

[REDACTED]

[REDACTED]¹⁸⁷

179. Similarly, VDG's 2017 Balance Sheet and Profit and Loss Statement identify [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹⁸⁸

¹⁸⁴ Ex. UU, 2016 Loan Agreement, V_032010-031, at V_032011.

¹⁸⁵ Ex. H, Coffey Dep. 153:17-158:4.

¹⁸⁶ Ex. BBB, VRO 2017 Balance Sheet and Profit and Loss Statement, V_032197-98.

¹⁸⁷ Ex. CCC, VRO 2018 Balance Sheet and Profit and Loss Statement, V_032203-04.

¹⁸⁸ Ex. DDD, VDG 2017 Balance Sheet and Profit and Loss Statement, V_032194-96.

180. VRO did not use [REDACTED]

181. No other documents evidencing the loan of \$500,000 between VDG and VRO exist.

In other words, there is no executed contract between VDG and VRO evidencing the terms

182. Additionally, more than two years after VRO filed this lawsuit, [REDACTED]

[REDACTED]¹⁹⁰

183. On June 27, 2018, VDG executed a contract stating that VDG *and not VRO* owned the '513 Patent:

[REDACTED]¹⁹¹

184. Below is a table illustrating the similarities between [REDACTED]

¹⁸⁹ Ex. H, Coffey Dep. 153:17-158:4; *see also id.* 91:12-93:8

¹⁹⁰ Ex. H, Coffey Dep. 194:12-24, 197:13-199:19, 202:5-203:19.

¹⁹¹ Ex. H, Coffey Dep. 194:12-24, 197:13-199:19, 202:5-203:19; Ex. EEE, Development and Manufacturing Agreement, VRO_000097-111, at § 1.8 (Coffey Dep. Ex. 21) [REDACTED]").



185. Below is a table illustrating the similarities between [REDACTED]

[REDACTED]

[REDACTED]

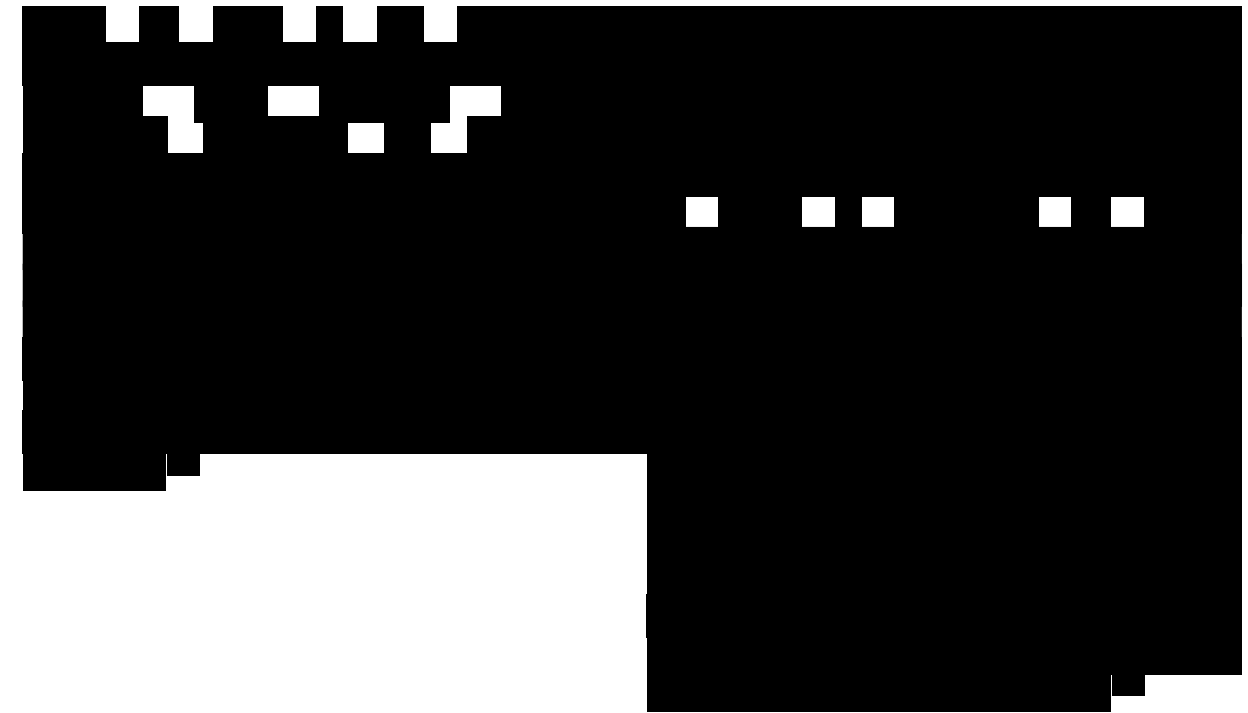
[REDACTED]

[REDACTED]

A large black rectangular redaction box covering the table content.

¹⁹² Ex. F, 2012 Agreement, § 1.7 (Coffey Dep. Ex. 28).

¹⁹³ Ex. EEE, [REDACTED], § 1.8 (Coffey Dep. Ex. 21).



VRO Sues Peloton for Infringing the '513 Patent.

186. On August 5, 2016, counsel for VRO received [REDACTED]

[REDACTED]

187. Five days later, on August 10, 2016 Villency and Coffey met with Foley for drinks.¹⁹⁷

188. Before the meeting Foley had no idea that Villency and Coffey had been negotiating with Microsoft to purchase the '513 Patent.¹⁹⁸

189. Coffey testified that he did not tell anyone at Peloton [REDACTED]

[REDACTED]⁹

¹⁹⁴ Ex. Q, 2014 Agreement, § 1.7(a) (Villency Dep. Ex. 13).

¹⁹⁵ Ex. EEE, [REDACTED] § 1.8 (Coffey Dep. Ex. 21).

¹⁹⁶ Ex. FFF, August 5, 2016, Letter attaching notarized assignment, VRO_000048-50 (Coffey Dep. Ex. 17).

¹⁹⁷ Ex. H, Coffey Dep. 169:3-12.

¹⁹⁸ Ex. H, Coffey Dep. 171:11-172:2, 176:5-177:2; Ex. E, Villency Dep. 243:9-245:7 ("We never informed anybody that we were going to buy this patent, the ['513 Patent]."); Ex. A, Foley Dep. 193:13-24, 194:2-12; 343:16-344:4.

¹⁹⁹ Ex. H, Coffey Dep., 176:1-177:2.

[REDACTED]

190. Villency also testified that he did not tell anyone at Peloton [REDACTED]

[REDACTED].²⁰¹

191. At the August 10, 2016 meeting, Coffey and Villency informed Foley for the first time that they had purchased the “Microsoft patent.”²⁰²

192. At the August 10, 2016 meeting, Coffey and Villency [REDACTED]

[REDACTED]
[REDACTED]²⁰³

193. Coffey testified that Peloton was [REDACTED]

[REDACTED]

194. The next day, VRO initiated this lawsuit against Peloton.²⁰⁵

195. Both VRO’s Complaint and the Report of its technical expert, Steven Lenz, allege that the Peloton Bike infringes numerous claims of the ’513 Patent.²⁰⁶

²⁰⁰ Ex. H, Coffey Dep., 176:11-20.

²⁰¹ Ex. E, Villency Dep., 242:22-245:21.

²⁰² Ex. H, Coffey Dep. 170:19-171:18; Ex. E, Villency Dep. 245:18-246:7; Ex. A, Foley Dep. 39:13-23.

²⁰³ Ex. H, Coffey Dep., 174:10-17.

²⁰⁴ Ex. H, Coffey Dep., 174:10-17.

²⁰⁵ See Doc. 1.

²⁰⁶ *Id.*; see also Ex. P, Lenz 2019.03.01 Infringement Report, at ¶17

Under VRO's Theory of Patent Infringement, VDG Designed and Contributed Portions of the Peloton Bike Accused of Infringement.

196. Both of the independent claims VRO accuses Peloton of infringing require “at least one operating component.”²⁰⁷

197. VRO's technical expert Steven Lenz opines that as to the accused Peloton bike, “operating components” include the braking mechanism and the flywheel with its associated speed sensor, which in turn is rotated through a user's operation of the bike's pedals and crankshaft.²⁰⁸

198. VDG was responsible for [REDACTED]

[REDACTED].²⁰⁹

199. VDG contributed to [REDACTED].²¹⁰

200. VDG contributed [REDACTED]

[REDACTED]¹¹

201. VDG oversaw [REDACTED]

202. VDG contributed to [REDACTED].²¹³

²⁰⁷ Ex. GGG, '513 Patent at 23:18 (claim 1) and 23:63 (claim 6). The Court will note that in the August 30, 2005 Certificate of Correction issued by the United States Patent Office, column 23, like 63 was altered to “change ‘operating element’ to – ‘operating component’ –.”

²⁰⁸ Ex. HHH, 4/19/19 Lenz Dep. 159:21-160:23; 183:14-184:9; 308:5-309:3 Ex. P, Lenz 2019.03.01 Infringement Report; 67:9-68:3, 69:9-20; 70:14-71:8.

²⁰⁹ Ex. M, Milstein Dep. 49:13-51:6, 53:4-54:12, 59:20-61:16, 63:7-64:24, 67:23-68:20, 81:11-86:21, 87:13-88:5, 267:20-268:9; Ex. III, Rendering of a Peloton bike (Milstein Dep. Ex. 1); Ex. JJJ, Early Rendering of Peloton Bike (Milstein Dep. Ex. 2); Ex. F, 2012 Agreement (Coffey Dep. Ex. 28); Ex. Q, 2014 Agreement (Villency Dep. Ex. 13)

²¹⁰ Ex. M. Milstein Dep. 92:7-94:12, 94:15-97:6, 101:23-102:11, 103:20-104:4, 104:16-105:1, 108:17-21. 150:15-154:24. 156:21-157:15, 162:6-163:17, 267:20-268:9, 270:6-20, 317:10-319:17; Ex. O, April 26, 2012 Email from Tom Cortese (Milstein Dep. Ex. 4); Ex. KKK, Nov. 15, 2012 Email from Tom Cortese; Ex. LLL, November 20, 2012 Email from T. Cortese (Milstein Dep. Ex. 10).

²¹¹ Ex. M, Milstein Dep. 131:20-132:3, 267:20-268:9, 270:6-20; Ex. B, Cortese Dep. 202:15-23; 313:24-314:5

²¹² *Id.*; Ex. M, Milstein Dep. 188:5-22, 196:4-8, 209:23-213:3, 215:6-21, 267:20-268:9, 270:6-20.

²¹³ Ex. MMM, Feng Dep. 76:25-77:25; Ex. B, Cortese Dep. 59:9-18; Ex. M, Milstein Dep. 220:3-222:12, 224:24-226:11, 267:20-268:9, 270:6-20; Ex. E, Villency Dep. 99:2-100:21; Ex. B, Cortese Dep. 59:9-18

203. VDG oversaw [REDACTED]

[REDACTED]²¹⁴

204. VDG contributed to [REDACTED]

205. VDG oversaw [REDACTED]

[REDACTED]²¹⁶

206. For purposes of calculating VRO's alleged damages for Peloton's infringement of the '513 Patent, VRO's damages expert opined and testified that the date of the parties' hypothetical negotiation would have occurred "as early as 2012."²¹⁷

Peloton Demanded VDG Indemnify, Defend, and Hold Peloton Harmless Against VRO's Claims.

207. On September 9, 2016, pursuant to Section 8.1 of the 2014 Agreement, Peloton served notice to VDG of VDG's obligation to indemnify, defend, and hold Peloton harmless against VRO's claims.²¹⁸

208. VDG refused to defend Peloton against VRO's claims of patent infringement.²¹⁹

209. Coffey testified that VDG [REDACTED]

[REDACTED]²²⁰

210. Villency and Coffey caused VDG to refuse Peloton's demand that VDG defend Peloton against VRO's claims.²²¹

²¹⁴ Ex. B Cortese Dep. 59:9-18; Ex. M, Milstein Dep. 188:5-22, 196:4-8, 209:23-213:3, 215:6-21, 267:20-268:9, 270:6-20.

²¹⁵ *Id.*; See also Ex. M, Milstein Dep. 79:7-25, 164:3-167:9, 169:2-18, 267:20-268:9, 270:6-20; Ex. M, Milstein Dep. Ex. 14

²¹⁶ *Id.* See also SoF 199, 202 and 204

²¹⁷ Ex. NNN, 2019.03.01 Expert Damages Report of Mark A. Peterson at pp. 4-5.

²¹⁸ Ex. H, Coffey Dep. 214:5-15; Ex. H, Coffey Dep. Ex. 24; Ex. OOO, Sept. 9, 2016, Notice of Indemnification Obligation Letter (Kushi Dep. Ex. 12); Doc. 59, Third-Party Defs' Answer, ¶ 84 ("Admitted that Peloton requested VDG to indemnify, defend and hold harmless PELOTON.").

²¹⁹ Ex. H, Coffey Dep., 214:2-21.

²²⁰ Ex. H, Coffey Dep., 214:2-21.

²²¹ *Id.*

Dated: New York, New York
July 1, 2019

Respectfully submitted,

/s/ Steven G. Schortgen

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